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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/500,909	11/24/2004	Christian Cloutier	GOUD:050US	1324
32425	7590	04/04/2006	EXAMINER	
FULBRIGHT & JAWORSKI L.L.P. 600 CONGRESS AVE. SUITE 2400 AUSTIN, TX 78701			SMITH, FANGEMONIQUE A	
			ART UNIT	PAPER NUMBER
			3736	

DATE MAILED: 04/04/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/500,909

Applicant(s)

CLOUTIER

Examiner

Fangemonique Smith

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 06 July 2004.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-23 is/are pending in the application.
- 4a) Of the above claim(s) 14 and 15 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-13 and 16-23 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 06 July 2004 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 7/6/04.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION

1. This Office Action is responsive to the Preliminary Amendment filed on July 6, 2004.

The Examiner acknowledges the amendment of claims 4, 6-8, 11-14, 16-17, 19-20 and 23.

Claims 1-23 are pending.

Drawings

2. The drawings are objected to under 37 CFR 1.83(a) because they fail to show the structural details of the device including the sensors and the audio and visual system as described in the specification. Any structural detail that is essential for a proper understanding of the disclosed invention should be shown in the drawing. MPEP § 608.02(d). Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and

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informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Claim Objections

3. Claims 14 and 15 are objected to under 37 CFR 1.75(c) as being in improper form because a multiple dependent claim should refer to other claims in the alternative only and cannot depend from any other multiple dependent claim. See MPEP § 608.01(n). Accordingly, the claims have not been further treated on the merits.

4. Claims 1, 2, 7, 9, 11, 13, 16, 17, 19, 21 and 23 are objected to because of the following informalities:

- a. At lines 7 and 10 of claim 1, line 2 of claims 2, 11, 15, 18 and 19, line 3 of claim 2, line 8 of claim 9, line 4 of claim 13, and line 5 of claim 21, it is suggested to change “selected in” to read -- selected from-- to appropriately list Markush grouping.
- b. At lines 2 and 3 of claim 7, it is suggested to modify “the data acquisition unit” to read -- the at least one data acquisition unit -- to maintain consistent claim terminology.
- c. At line 3 of claim 7, it is suggested to modify “the control unit” to read -- the at least one control unit -- to maintain consistent claim terminology.
- d. At line 1 of claims 16, 17, 19 and 23, the word “anyone” should be changed to -- any one --.

Appropriate correction is required.

Claim Rejections - 35 USC § 112

5. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

6. Claims 14, 15, 18 and 23 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

7. At line 2 of claim 14, the claim recites the limitation “the temperature probe”. There is no distinct claim indicating the system has a temperature probe. Prior to this recitation, claim 9, a claim from which claim 14 depends, discloses a temperature probe as a part of a Markush grouping in an alternative form. Since the claims do not necessitate the device having a temperature probe, it is improper to recite the limitation appears to be referring to different ends of the same wire. It is unclear to what “the end” refers, rendering the claim vague and ambiguous.

8. At line 3 of claim 14, the pronoun “it” is used. However, one cannot be certain to what the pronoun is intended to refer. Hence, the claim is rendered unclear and indefinite.

9. At line 3 of claim 15, the pronoun “its” is used. However, one cannot be certain to what the pronoun is intended to refer. Hence, the claim is rendered unclear and indefinite.

10. Claim 18 recites the limitation "the alarms" in line 1. There is no prior mention of an alarm in claim 18 or in any claim from which claim 18 depends. Therefore, there is insufficient antecedent basis for this limitation in the claim.

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11. Claim 23 is rejected under 35 U.S.C. 112, second paragraph, as being incomplete for omitting essential steps, such omission amounting to a gap between the steps. See MPEP § 2172.01. The omitted steps are: all steps pertaining to how the activity and comfort monitoring system is used.

Claim Rejections - 35 USC § 102

12. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

13. Claims 1-8, 16, 17 and 19-23 are rejected under 35 U.S.C. 102(e) as being anticipated by Lehrman et al. (U.S. Patent Number 6,703,939).

In regard to claims 1-8, 16, 17 and 19-23, Lehrman et al. disclose a system and method for evaluating movement of a body relative to an environment. The system disclosed by Lehrman et al. monitors the activity and comfort of at least one subject. The device includes at least one portable data acquisition unit in the form of a sensing system (71) comprising a set of sensors, which are combined according to needs of the at least one subject under monitoring. The unit is maintained in a close relationship with the body of a subject by use of a clip (23) (col. 5, lines 39-45). Lehrman et al. disclose main sensors consisting of movement sensors and complementary sensors used to detect G forces, temperature and sound. Lehrman et al. further

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disclose the device having at least one control unit (47) connected to the at least one data acquisition unit (71) wherein the at least one data acquisition unit (71) and comprises an RF receiver and transmitter (col. 10, lines 23-53). The device according to Lehrman et al. also incorporates a control unit comprising sound modules to control the alarm signals (col. 10, lines 43-61). The Lehrman et al. system further comprises a signal-processor (117) connected to an activity modulator, which receives data from the set of sensors for interpretation and notification (col. 10, lines 28-67). Additionally, the control unit comprises a user interface in the form of an input keypad and a retransmission unit (125) as a communication device. The system further includes a non-volatile memory means for storing patient information as well as a network connection for gaining remote access to the information gathered by the system. The communication device allows tuning the receiver to acquire data from the data acquisition unit. Lehrman et al. disclose using the data acquisition unit to detect activity of the subject while coordinate data and prerecorded sets of movement activity assist with establishing environmental parameters to determine when an abnormal motion occurs defined by a tolerance level predetermined for the subject. The system incorporates a remote monitoring mechanism wherein a non-response situation triggers an alarm (col. 10, lines 54-61). At least one control unit of the Lehrman et al system receives signals of a state of the at least one subject at intervals and provides alerts (col. 12, lines 35-50).

Claim Rejections - 35 USC § 103

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14. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

15. Claims 9-13 and 18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lehrman et al. (U.S. Patent Number 6,703,939) in view of Sullivan et al. (U.S. Patent Number 6,984,207).

In regard to claims 9-13 and 18, Lehrman et al. disclose the features of the Applicant's invention as described above including a system for monitoring activity and comfort of at least one subject comprising at least one data acquisition unit having a set of sensors. There is a control unit connected the at least one data acquisition unit of the Lehrman et al. device wherein the sensors are able to detect G forces, temperature and sound. The Lehrman et al. system further monitors movement of the subject in accordance with the respiration pattern of the subject including heart rate (col. 10, lines 1-22). Additionally, the user interface of the system allows a person to be informed of a state of the subject, to order a retroaction according to the state of the at least one subject (col. 9, lines 40-67; col. 10, lines 1-67). The sensor of the Lehrman et al. device is calibrated according to predetermined motion data of the subject to determine a "tolerance" level for the subject. Although Lehrman et al. disclose the use of sensors; the reference is silent to what types of sensors are used. Lehrman et al. do not disclose a wing-shaped piezoelectric sensor comprising at least one piezo film coated with a flexible, non-allergenic and isolating material used with the system. Sullivan et al. disclose a physiological monitoring apparatus and

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method having a piezoelectric film sensor for sensing physiological phenomenon. The sensor is made of a non-allergenic and isolating material, polyvinylidene fluoride. The sensor is connected to a microcomputer to record analyze and display data for on-line assessment and to provide a quick response. It would have been obvious to one having ordinary skill in the art at the time the Applicants' invention was made to modify a system for detecting an acceleration of a body and evaluating movement of a body relative to an environment to detect irregular motions of the body, similar to that disclosed by Lehrman et al., to include piezo-electric sensors, similar to that disclosed by Sullivan et al., to implement a commonly used type of sensor which allows a real-time interactive display, while maintaining the functionality of the device. It also would have been obvious to one having ordinary skill in the art at the time the Applicants' invention was made to shape the sensor in the form of a wing as mere design choice while maintaining the accuracy and utility of the device.

Conclusion

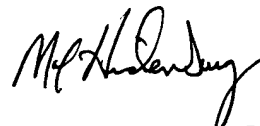
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Fangemonique Smith whose telephone number is 571-272-8160. The examiner can normally be reached on Mon - Fri 8am - 4:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Max Hindenburg can be reached on 571-272-4726. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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M. H. O'LEARY
PATENT EXAMINER
UNIT 3736